

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PLAINTIFF'S COMPLAINT

Plaintiff, MORGAN HENDERSON (“Plaintiff”), through her attorney, alleges the following against Defendant, DISCOVER FINANCIAL SERVICES, INC. (“Defendant”):

INTRODUCTION

1. Count I of Plaintiff's Complaint is based on the Telephone Consumer Protection Act., 47 U.S.C. § 227, et seq. ("TCPA").
2. The TCPA was designed to prevent calls and text messages like the ones described herein, and to protect the privacy of citizens like Plaintiffs. "Voluminous consumer complaints about abuses of telephone technology – for example, computerized calls dispatched to private homes – prompted Congress to pass the TCPA." *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 744 (2012).
3. In enacting the TCPA, Congress intended to give consumers a choice as to how corporate similar entities may contact them, and made specific findings that "[t]echnologies that might allow consumers to avoid receiving such calls are not universally available, are

1 costly, are unlikely to be enforced, or place an inordinate burden on the consumer. TCPA,
2 Pub. L. No. 102–243, § 11. In support of this, Congress found that

3 [b]anning such automated or prerecorded telephone calls to the
4 home, except when the receiving party consents to receiving the call
5 or when such calls are necessary in an emergency situation affecting
6 the health and safety of the consumer, is the only effective means
7 of protecting telephone consumers from this nuisance and privacy
8 invasion.

9 *Id.* at § 12; see also *Martin v. Leading Edge Recovery Solutions, LLC*, 2012 WL 3292838,
10 at* 4 (N.D.Ill. Aug. 10, 2012) (citing Congressional findings on TCPA’s purpose).

11 4. Congress also specifically found that “the evidence presented to the Congress indicates that
12 automated or prerecorded calls are a nuisance and an invasion of privacy, regardless of the
13 type of call....” *Id.* at §§ 12-13. See also, *Mims*, 132 S. Ct. at 744.

14 **JURISDICTION AND VENUE**

15 5. This Court has jurisdiction under 28 U.S.C. §1331 and 15 U.S.C. §1692k.
16 6. Jurisdiction of this Court arises pursuant to 15 U.S.C. § 1692k(d), which states that such
17 actions may be brought and heard before “any appropriate United States district court
18 without regard to the amount in controversy.”
19 7. This Court has jurisdiction over Plaintiff’s TCPA claim pursuant to *Mims v. Arrow*
20 *Financial Svcs. LLC*, 132 S. Ct. 740, 2012 WL 125249 (Jan. 18, 2012).
21 8. Venue and personal jurisdiction in this District are proper because Defendant does or
22 transacts business within this District, and a material portion of the events at issue occurred
23 in this District.

24 **PARTIES**

25 9. Plaintiff is a natural person residing in New York, New York.

10. Defendant is a credit card company headquartered in Riverwoods, Illinois.

11. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

4 **FACTUAL ALLEGATIONS**

5 12. In or around December 2015, Defendant's collectors began placing collection calls to
6 Plaintiff on Plaintiff's cellular telephone at (215) 866-7351.

7 13. Defendant's collectors call Plaintiff from several telephone numbers, including but not
8 limited to (800) 767-7347.

9 14. On December 28, 2015 at 6:12 p.m., Plaintiff spoke with Defendant's representative
10 "Tyler." During the conversation with Defendant's representative, Plaintiff requested that
11 Defendant cease calling his cellular phone.

12 15. Despite Plaintiff's request, Defendant's continued to place collection calls to Plaintiff's
13 cellular telephone.

14 16. Defendant placed fifty (50) calls to Plaintiff between December 28, 2015 and January 27,
15 2016

16 17. Defendant used an "automatic telephone dialing system", as defined by 47 U.S.C. §
18 227(a)(1), to place its repeated collection calls to Plaintiff seeking to collect the debt
19 allegedly owed.

20 18. Plaintiff never provided Plaintiff's cellular telephone number to Defendant and never
21 provided Plaintiff's consent to Defendant to be contacted on Plaintiff's cellular telephone.

22 19. If Defendant at one time had consent to place calls to Plaintiff's cellular telephone number,
23 it no longer has consent to call Plaintiff after being instructed by Plaintiff to cease all calls
24 to her.

20. Defendant's calls constituted calls that were not for emergency purposes as defined by 47 U.S.C. § 227(b)(1)(A).

21. Defendant's calls were placed to telephone number assigned to a cellular telephone service for which Plaintiff incurs a charge for incoming calls pursuant to 47 U.S.C. § 227(b)(1).

22. Plaintiff is not a customer of Defendant's services, has never provided any personal information, including Plaintiff's cellular telephone number, to Defendant for any purpose whatsoever.

23. Accordingly, Defendant never received Plaintiff's "prior express consent" to receive calls using an automatic telephone dialing system or an artificial or prerecorded voice on Plaintiff's cellular telephone pursuant to 47 U.S.C. § 227(b)(1)(A).

24. Despite this, Defendant continued to place repeated collection calls to Plaintiff, on Plaintiff's cellular telephone, using an "automated telephone dialing system."

COUNT I
DEFENDANT VIOLATED THE TELEPHONE
CONSUMER PROTECTION ACT

25. Plaintiff repeats and re-alleges paragraphs 1-24 of Plaintiff's Complaint.

26. Defendant's conduct violated the TCPA by:

a. Placing non-emergency telephone calls to Plaintiff's cellular telephone using an automatic telephone dialing system and/or pre-recorded or artificial voice in violation of 47 U.S.C. § 227 (b)(1)(A)(iii).

WHEREFORE, Plaintiff, MORGAN HENDERSON, respectfully requests judgment be entered against Defendant, DISCOVER FINANCIAL SERVICES, INC., for the following:

27. As a result of Defendant's negligent violations of 47 U.S.C. § 227(b)(1), Plaintiff is entitled to and requests \$500 in statutory damages, for each and every violation, pursuant to 47

1 U.S.C. § 227(b)(3)(B);
2

3 28. As a result of Defendant's willful and/or knowing violations of 47 U.S.C. § 227(b)(1),
4 Plaintiff is entitled to and requests treble damages, as provided by statute, up to \$1,500, for
5 each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C.
6 § 227(b)(3)(C);
7

8 29. Plaintiff is entitled to and seeks injunctive relief prohibiting such conduct in the future;
9 and
10

11 30. Any other relief that this Honorable Court deems appropriate.
12

13 DATED: March 30, 2016
14

15 RESPECTFULLY SUBMITTED,
16 By: s/ Daniel Goldsmith Ruggiero.
17 Daniel Goldsmith Ruggiero
18 P.O. Box 291
19 Canton, MA 02021
20 P: 339-237-0343
21 F: 339-707-2808
22 Email: druggieroesq@gmail.com
23
24
25